

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: 5/5/09

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ROGER MARX DESENBURG, :

Plaintiff, :

-against- :

ALSTON-BIRD, LLP & NEILL R. KAHLE, JR., :

Defendants. :

----- x

09 Civ. 3921 (GBD) (AJP)

**ORDER TO PRO SE PLAINTIFF
TO SERVE COMPLAINT
& ORDER TO SHOW CAUSE**

ANDREW J. PECK, United States Magistrate Judge:

This Order is to inform you that Judge Daniels has assigned this case to me for all pretrial purposes. An extra (courtesy) copy of all papers hereafter submitted to the Court should be sent to me at the United States Courthouse, 500 Pearl Street, Room 1370, New York, New York 10007-1312.

Enclosed is a copy of the "Individual Practices of Magistrate Judge Andrew J. Peck." The parties are required to follow them.

Plaintiff must make arrangements to have the summons and complaint promptly served on all defendants. Plaintiff must provide a copy of this Order (and the enclosed Rules) to defendant's counsel either along with the summons and complaint or once counsel has appeared for defendant.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must

dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. . . .

The complaint in this action was filed as of April 20, 2009. Accordingly, if service is not made upon the defendant(s) by August 18, 2009 (which is 120 days from filing of this complaint), I will recommend to Judge Daniels that the action be dismissed. You must supply a courtesy copy of the proof of service to my chambers.

Plaintiff is required to advise the Clerk of the Court and my chambers of any change of address. Failure to keep the Court informed of your current address may result in dismissal of your case.

If plaintiff needs any assistance with court procedures, plaintiff can contact the Pro Se Clerk at the United States Courthouse, 500 Pearl Street, 2nd Floor, New York, New York 10007. The telephone number for the Pro Se Clerk is (212) 805-0175.

* * *

The Court advises plaintiff that the Court may not have subject matter jurisdiction over this action. Federal courts have subject matter jurisdiction when there is complete diversity between the parties or if there is a federal question presented. Alston & Bird LLP also has a New York office – meaning some of its partners are New York residents – as is plaintiff, and thus there is not complete diversity. While the complaint states that malpractice claims against patent lawyers must be brought in federal court, the complaint does not cite any federal statute in support and this Court is dubious. Plaintiff should seriously consider dismissing this action without prejudice and

commence it in state court. Otherwise, plaintiff must show cause in writing by May 22, 2009 as to the jurisdictional basis for the complaint.

SO ORDERED.

Dated: New York, New York
May 5, 2009



Andrew J. Peek
United States Magistrate Judge

Copies to: Roger Marx Desenberg (Regular & Certified Mail)
Judge George B. Daniels